

LeRoy K. Wheeler,

Plaintiff,

VS.

Robyn T. Schmalenberger, Patrick
Branson, and Leann K. Bertsch,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Case No. 1:11-cv-079

On August 8, 2012, Wheeler filed a motion for preliminary injunction to enjoin the Defendants and all their subordinates from opening Wheeler's legal and privileged mail as to this case outside of his presence, whether incoming or outgoing. See Docket Nos. 31 and 32. Now before the Court is Judge Miller's Report and Recommendation filed on November 29, 2012, regarding the motion for preliminary injunction. See Docket No. 57. The Report and Recommendation provides in relevant part that "[w]hen deciding whether to grant an inmate preliminary injunctive relief, a court must consider (1) the threat of irreparable harm to the inmate; (2) the balance between the harm to the inmate and the harm that granting the injunction will inflict

on the nonmoving party; (3) the probability that the inmate will succeed on the merits; and (4) the public interest.” See Docket No. 57 (citing Goff v. Harper, 60 F.3d 518, 520 (8th Cir. 1995)). The Report and Recommendation found none of these factors weigh in favor of granting a preliminary injunction. See Docket No. 57. Judge Miller recommended that Wheeler’s motion for preliminary injunction be denied. See Docket No. 57.

Wheeler filed an objection to the Report and Recommendation on December 12, 2012. See Docket No. 63. He argues that Judge Miller mischaracterized the case and took the position of the Defendants, whereby injecting his own personal beliefs into the Report and Recommendation.

The Court has reviewed the entire record, the Report and Recommendation, Wheeler’s objections, and the relevant case law. The Court finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation in its entirety (Docket No. 57) and **DENIES** the “Motion for Preliminary Injunction” (Docket No. 32).

IT IS SO ORDERED.

Dated this 20th day of December, 2012.

/s/ Daniel L. Hovland

Daniel L. Hovland, District Judge
United States District Court